No. 927

In the Supreme Court of the United States

OCTOBER TERM, 1957.

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and

KENNETH BURKE,

President and Business Agent of Local 24,

Petitioners,

vs.

REVEL OLIVER and A. C. E. TRANSPORTATION COMPANY, INC., and INTERSTATE TRUCK SERVICE, INC.,

Respondents.

BRIEF OF RESPONDENT, REVEL OLIVER, In Opposition to Petition for Writ of Certiorari.

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vs.

REVEL OLIVER and A. C. E. TRANSPORTATION COMPANY, INC., and INTERSTATE TRUCK SERVICE, INC.,

Respondents.

BRIEF OF RESPONDENT, REVEL OLIVER, In Opposition to Petition for Writ of Certiorari.

STATEMENT OF REVEL OLIVER'S CASE.

In the Common Pleas Court of Summit County, Ohio, an action was brought by Revel Oliver, the owner of tractors and trailers, each of which is under a lease agreement with one or the other of the two respondent companies—A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc.—which are common carriers engaged in transporting freight for hire by motor equipment on the highways of Ohio and other states under certificates of convenience and necessity issued by the Interstate Commerce Commission and the Public Utilities Commission of Ohio; the other original defendants, with the excep-

tion of the petitioners in this Court, having been dismissed by Oliver in the trial court.

The purpose of the action is to restrain the carriers, the Union (Local 24 of the International Brootherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America), and Kenneth Burke, as president and business agent of said Local 24, from enforcement of a contract entered into by them, which would supersede the owner-operator and carriers' existing lease agreements, and would restrict trade and create a monopoly in the business of leasing equipment, in violation of Sec. 1331.01, R. C., *et seq.* (Valentine Act).

The Union asserted that the sole jurisdiction was in the National Labor Relations Board; that if any violation of law exists, it is a violation of the Federal Antitrust Laws, rather than the state laws; and that the matter is one falling within the field of collective bargaining and other legitimate fields of agreement between employer and employee.

Oliver's position is:

"* * * we are not here concerned with a labor dispute. Nor do we seek an interpretation of, nor attempt an assault upon, the agreement as it deals with the wages and conditions of employees of the carriers, nor the right of the union and carriers to negotiate and execute a collective bargaining contract covering the subject matter which is within their field to negotiate.

"Our problem here is, May the carriers and Union fix by agreement the price to be charged for the use of and the supervision of the trucks and trailers used in the trucking business, owned by individuals who lease the equipment to the carriers. This and nothing else is here involved."

The subject of the controversy is Article 32 of the contract between Union and the carriers, which became

effective during the life of leases between the owner-operator and the carriers. The provisions are:

"Owner-Operators

"Section 1. Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement, unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper I. C. C. and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

"(Note: Whenever 'owner-operator' is used in this article, it means 'owner-driver' only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)

"Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

"Section 3. Certificate and title to the equipment must be in the name of the actual owner.

"Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

"Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

"Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equip-

ment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such case all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

"Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

"Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

"Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

"Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

"All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

"All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

"Section 11. There shall be no interest, or handling charge on earned money advanced prior to the regular pay day.

"Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

"(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

	Per mile
Single axle, tractor only	9½¢
Tandem axle, tractor only	10¢
Single axle, trailer only	3¢
Tandem axle, trailer only	4¢

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is redispatched from home terminal; the above rates to be based on 23,000-pound load limit. On load limits over 23,000 pounds, there shall be one-half (½) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and

driven by the owner-driver. Nothing herein shall apply to leased equipment not owned by a driver.

"The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

"Section 13. Driver-owner mileage scale does not include use of equipment for pickup or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

"Section 14. There shall be no reductions where the present basis of payment is higher than the minimum established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

"Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration

board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

"Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

"Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the 'driver-owner-operator' sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the 'driver-owner-operator' shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

"Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for serv-

ices on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to Article X.

"Section 19. (a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of

(1) protecting provisions of the Union contract;

(2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;

(3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under the terms of the contract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article XXXIII) in the original 1945-47 Over-the-Road contract;

(4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions,

set up uniform rules and practices under which all such cases will be heard;

(6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1955, and ending January 31, 1961.

"(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty (60) per cent or more of time."

This contract, of which Article 32, set forth above, is a part, is known as the Central States Area Over-the-Road Motor Freight Agreement, with Ohio Rider. It has generally been adopted by common carriers and locals of the parent Union throughout twelve central states. It contracts for 3,000 to 3,500 carriers and 40,000 to 50,000 employees. In Ohio it covers approximately 500 carriers and 6,000 employees. Approximately 5 to 10 percent of these employees are owner-operators.

A principal question raised by the Union is whether the state court has jurisdiction to enjoin the enforcement of the contract, or whether its jurisdiction has been preempted by authority granted the National Labor Relations Board.

The Court of Common Pleas of Summit County found that such jurisdiction was vested in the state court, and enjoined, pursuant to trial, the enforcement of the contract as it affected Oliver's pre-existing leases. The Court of Appeals entertained an appeal for trial de novo from the judgment there entered.

From the record, the Court of Appeals found that the controversial agreement was entered into following a strike, called to induce the carriers to contract with the Union, and that the contract so executed infringed upon and superseded many of the provisions of existing contracts between the plaintiff and the carriers.

In determining the jurisdiction of the Court, the Court of Appeals observed that the subject matter of the litigation falls within the powers of the state courts, unless federal statutes enacted pursuant to the commerce clause of the Constitution of the United States intend to supersede or suspend the exercise of the reserved powers of the states. *Illinois Central Rd. Co. v. State Public Utilities Comm. of Illinois*, 245 U. S. 493, at p. 510, 62 L. Ed. 425.

The Court found no federal statute ordering, nor in fact any federal case which holds, that the federal government retains exclusively to itself the right to remedy the evils resulting from contracts and agreements between interstate carriers and Unions found to be in restraint of trade. Federal legislation does not occupy the entire field, to the exclusion of state laws. We further do not find that we are met with a labor dispute, unfair labor practice, right to collective bargaining, or any other right arising under the labor laws of the federal government, of which the right of adjudication has been exclusively retained by the federal government acting through any of its agencies.

On the question of jurisdiction, the Court found and held that, if it be found that the contract before us, in connection with the established facts, is counter to this state's public policy as pronounced in its antitrust laws, this Court has jurisdiction to restrain such conduct, because it falls within a field open to state regulation, even though its effect falls upon litigants involved in interstate commerce.

Upon the basis of the allegations in the pleadings and the proof adduced, the Court found that the petitioner, an independent contractor, to the extent that he leases motor vehicles to carriers, rather than an employee under the federal statutes, could not have presented his grievances to the National Labor Relations Board. There is nothing in the National Labor Relations Act, as amended by the Labor Management Relations Act (Taft-Hartley Act), which would give the petitioner herein such right.

The Court rejected the claim of lack of jurisdiction to adjudicate the issues; and, after so ruling, proceeded to examine the right of the petitioner to injunctive relief.

The public policy of Ohio in respect to monopoly and restraints of trade is set forth in Sec. 1331.01, R. C., *et seq.* The first-named statute, in so far as here applicable, is:

> "As used in sections 1331.01 to 1331.14, inclusive, of the Revised Code:
>
> "* * *
>
> "(B) 'Trust' is a combination of capital, skill, or acts by two or more persons for any of the following purposes:
>
> "(1) To create or carry out restrictions in trade or commerce;
>
> "(2) To limit or reduce the production, or increase or reduce the price of merchandise or a commodity;

"(3) To prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or a commodity;

"(4) To fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption in this state;

"(5) To make, enter into, execute or carry out contracts, obligations, or agreements of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, or consumption below a common standard figure or fixed value, or by which they agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity, or transportation between them or themselves and others, so as directly to preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale or transportation of such article or commodity, or by which they agree to pool, combine, or directly or indirectly unite any interest which they have connected with the sale or transportation of such article or commodity, that its price might in any manner be affected.

"A trust as defined in division (B) of this section is unlawful and void."

The Court found that Oliver had his equipment under lease to the carriers. It was a lease entered into through a voluntary agreement between the carriers and him long before the execution of the Union contract. That the contract between the carrier and the Union would supersede and nullify many of the items of his contract is not open to dispute.

The carrier-Union contract may be succinctly said to be one which fixes the price to be charged for the use and supervision of the trucks and trailers used in the trucking business, owned by individual persons who lease their equipment to the carriers.

The judgment of the court was that such an agreement, and the consequences inevitably flowing therefrom, if the contract were allowed to stand, is squarely in conflict with the public policy of this state as reflected in Sec. 1331.01, R. C., *et seq.*

The order of the Courts of Ohio is as follows:

1. This cause came on to be heard upon the appellee's amended petition, the answers of the appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and Kenneth Burke, the President and Business Agent for Local No. 24, upon the evidence, the briefs and arguments of counsel for all parties and after due and careful consideration the Court finds:

2. (a) At the time leases for the rental of plaintiff appellee's motor equipment were in full force and effect between plaintiff appellee and defendant appellees, A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc., the Union and A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc., executed a contract, the provisions of Article 32 thereof being as follows:

"Owners-Operators

"Section 1. Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement, unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding

proper I. C. C. and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

(Note: Whenever 'owner-operator' is used in this article, it means owner-driver only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)

"Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

"Section 3. Certificate and title to the equipment must be in the name of the actual owner.

"Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

"Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

"Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agree-

ment is terminated and in such cases all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

"Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

"Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

"Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

"Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

"All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

"All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

"Section 11. There shall be no interest, or handling charge, on earned money advanced prior to the regular pay day.

"Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driver equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

"(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

	Per Mile
Single axle, tractor only	9½¢
Tandem axle, tractor only	10¢
Single axle, trailer only	3¢
Tandem axle, trailer only	4¢

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is redispatched from home terminal; the above rates to be based on 23,000 pound load limit. On load limits over 23,000 pounds, there shall be one-half (½) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to lease equipment not owned by a driver.

"The minimum rates set forth above result from the joint determination of the parties that such rates

represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

"Section 13. Driver-owner mileage scale does not include use of equipment for pickup or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

"Section 14. There shall be no reductions where the present basis of payment is higher than the minimums established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

"Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the employer or with the aid of Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

"Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

"Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the 'driver-owner-operator' sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the 'driver-owner-operator' shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

"Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to Article X.

"Section 19. (a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of

(1) protecting provisions of the Union contract;

(2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;

(3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under the terms of the contract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article XXXIII) in the original 1945-47 Over-the-Road contract;

(4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;

(6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1955, and ending January 31, 1961.

"(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty (60) per cent more of time."

2. (b) Plaintiff appellee is an independent contractor.

(c) Article 32 of the contract is not within the protection provided by Section 157 of the Labor Management Relations Act of 1947.

(d) Article 32 squarely is in conflict with the public policy of the State of Ohio as reflected in Sec. 1331.01 R. C. et seq. and is void and unenforcible.

(e) The plaintiff-appellee will be injured if the defendants-appellants carry out the provisions of Article 32;

(f) The plaintiff-appellee has no remedy under the Labor Management Relations Act or any other federal legislation;

(g) Jurisdiction in the state court exists; and

(h) It is the duty of this Court to exercise its powers to restrain the defendants-appellants from enforcing the terms of Article 32.

3. It is therefore Ordered, Adjudged and Decreed:

(a) That the defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and each of them, their

agents, representatives and successors or persons, acting, by, through or for them, or in concert with each other, are hereby perpetually restrained and enjoined from entering into any agreements one with the other or carrying out the effects, requirements or terms of any such agreement, which will require the alteration, cancellation or violation of plaintiff-appellee's existing lease or leasing agreement or any such agreement hereafter renewed or renegotiated and entered into, and (b) That the defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successor of each and those acting in concert with said defendants-appellees and appellants are hereby perpetually enjoined and restrained from entering into any combination, arrangement, agreement or stipulation in the future, or the negotiation therefor, the purpose, intent or tendency of which is to fix or determine in any manner the rate to be charged for the use of plaintiff's equipment, leased by said plaintiff-appellee to the defendants-appellees, A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc., and (c) That the said defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successors of each are hereby perpetually enjoined from giving force and effect to Section 32 of the Contract between them as is fully set forth in this Court's finding, or any modification or alteration thereof, the import, effect or tendency of which shall attempt to fix the rates and the use of plaintiff-appellee's equipment

or to fix or determine the return for plaintiff-appellee's capital investment in said equipment.

4. To all of which finding, judgment and order, the defendants-appellants and Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent for No. 24 are granted proper exceptions.

OLIVER'S POSITION IN THE STATE COURT AND HIS POSITION HERE.

In January of 1955, representatives of the Teamsters Union under the direction of James Hoffa, then Vice President, met with the representatives of private, common and contract carriers of Ohio and eleven other central states, in Chicago, and entered into the contract complained of. At this conference Oliver and the owners of motor equipment leased to common carriers did not participate and it is the making of this contract that constitutes a violation of 1331.01 and tends to create a monopoly and fixing the price to be uniformly charged for the use of leased equipment that is prohibited by the laws of Ohio.

We wish to make clear that Oliver does not question the right of the Union and Carriers to make a contract governing the wages, hours and conditions of employment of the employees of the Carriers. We direct our attention to the provisions of the Contract which provide for a fixed rate per mile for all equipment owned and operated by Oliver and leased by him to carriers in Ohio by separate long standing agreements.

These specific items are contained in Section 32—a separate, distinct and separable provision which was entered into for the avowed purpose of breaching Oliver's

existing leases and for the purpose of fixing a uniform charge for the use of and income from leased motor equipment, clearly distinct and distinguishable from the fixing of wages, hours and working conditions of the carriers' employees.

The enforcement of Section 32 against Oliver definitely violates 1331.01 by

First: Fixing minimum prices which the carrier must pay and a minimum charge which the owner must make for the use of equipment, which he leases to the carrier.

Second: The Contract establishes prohibitive restrictions and penalties which prevent the carriers from leasing and thus limits the number of pieces of equipment which may be in the competitive market.

This is not a labor dispute. We do not contest the right of the Union to represent the employees of the carriers for collective bargaining purposes and to enter valid contracts covering employees regarding their wages, hours and conditions of employment and the improvement of their conditions. However, where as here Oliver creates capital, saves it and invests it in motor trucks and equipment which he owns and leases for a money consideration, by way of percentage, tonnage or mileage, that any arrangement, combination or contract which is created whereby competition either in the supply or the price charged for the use of such equipment is restrained or prevented, or if it tends to produce this result, of restraint, or whereby the free pursuit of any lawful business by Oliver is restrained or restricted that that constitutes a clear violation of the Valentine Act of Ohio; and acts conducted or contracts made in violation thereof are subject to injunctive order of the State Court.

The evidence in the case shows that prior to January, 1955, Oliver was engaged in the pursuit of a lawful business. He owned and operated his tractors and trailers leased to the carriers.

In January 1955, the Central States Area Over-the-Road Agreement was made covering Ohio operations and containing the objectionable Section 32 dealing only with owner-operators. This Contract deals not merely with the rights of union, carrier and employees but with the fixing of price for the use of *equipment*, personal property as distinguished from the price of *labor* and thus interfering with the lawful pursuits of Oliver in a legal business, a field in which neither carrier, union nor owner-operator have a right in which to engage and any agreement, or combination between any of them fixing or restricting the price for the use of equipment used in the business is illegal and void under 1331.01 of the Revised Statutes of Ohio.

The Union Contract speaks for itself. By its very words it condemns the Union and Carriers and establishes the claim of monopoly. It has uniform application throughout Ohio and covers and intends to cover private, common and contract carriers, exclusive only of railroads and bus lines. Its enforcement has already resulted in the elimination of owner operators from the competitive field, a result demanded by the Teamsters in public hearings on numerous occasions; the enforcement of its provisions places an unlawful restraint upon Oliver in the pursuit of his business and requires him to pay for feather-bedding services, for which he neither contracted nor which he desires, which places a large and illegal burden upon his lawful pursuits.

THE QUESTION BEFORE THE COURTS OF OHIO WAS: "Does the Over-the-Road Agreement executed by the Defendant Carriers and Unions as it applies to the rate structure to be charged for the use of and operation of equipment leased to the Carriers constitute a violation of the Valentine Act of Ohio?"

Our problem here is: may the Carriers and Union fix by agreement the price to be charged for the use of and the supervision of the trucks and trailers used in the trucking business, owned by individuals who lease the equipment to the carriers. This and nothing else is here involved.

It is the over-the-road contract between the Carriers and Union that fixes uniform charges for equipment not owned by the Union or Carrier but by a third party that creates the monopoly and the restraint of trade prohibited by Revised Code 1331.01 et seq. It matters not that, as testified by Mr. Hoffa in the Court of Appeals, the Union had to force the Carrier to sign with a shot-gun at the Carrier's head.

Oliver has not relied on the illegal contract for the leasing and use of his equipment. He has relied wholly on his lease. He has not sought to retain the benefits, if any, under the Union contract and repudiate the unfavorable. He has relied on his lease for remuneration and upon it only. He has attacked the contract of the Union and Carriers only as it pertains to the leasing of his equipment and its use as a violation of Ohio's monopoly laws and an unjustifiable interference with his right to contract for the use of his equipment, in which he alone has invested his capital, and on whose frugality, enterprise and good management, success or failure depends, since the illegal union contract, by its very terms attempts to supersede

and replace his own voluntary agreement with his lessees.

Oliver is without relief in Federal Court or before the National Labor Relations Board.

There is no doubt that if he is given no relief by the Act and there is no remedy provided for him, recourse may be had to the proper state tribunal.

Free enterprise is the key which unlocks the combination of resources, employers, workers, market and new enterprises.

Motor truck transportation is one of the most important industries. It is the link between many industries. It may mean hardship and deprivation to millions in cities depending upon the motor truck to bring them food and supplies. Its importance in defense of our country is within the living memory of us all. Of all things, the public as a whole is concerned with, and affected by, transportation of the food of life and the supplies and finished products of our factories, is dependent upon the motor truck transportation operations. Here, we must have free enterprise. Here carriers must not make conditions and restrictions on the free enterprise system of our country by contracting with a Union to drive owners of motor equipment out of business or to fix their income, or restrict their right to compete in the field of furnishing a most substantial part of the rolling stock. We must not permit anyone through the guise of a labor-management contract to "control the air, land and sea."

While here we have dealt principally with monopoly and the destruction of competitive business and free enterprise we cannot overlook the right of Oliver to work and earn; to earn and save; to save and invest; to invest and bargain for a return on his investment free from restraint, except as fixed by proper public authority.

DISCUSSION OF AUTHORITIES.

We shall not belabor the Court with a discussion of all cases cited by petitioners.

American Trucking Association vs. United States, 344 U. S. 298, has no application to the case. MC-43, a regulation of the Interstate Commerce Commission, was the subject of litigation. Many interests including the Department of Agriculture of the U. S. assailed the validity of the regulation, its scope and the Commission's authority to make it. This Court found the Commission had been authorized by Congress to make the regulation and that in saying that 30 days was the minimum period for which motor equipment might be leased was a reasonable regulation to correct evils presented to the Commission covering transactions for less than 30 days.

MC-43 is not here involved in any form and the evils which the Court discussed as having been found by the Commission are not here present by way of defense to Oliver's suit nor by the introduction of evidence of any kind concerning the matter dealt with by the Commission.

In *Napier vs. Atlantic Coast Line R. Co.*, 272 U. S. 605, this Court held Congress may regulate locomotive equipment used in a highway of interstate commerce so as to preclude state legislatures from placing stricter or lesser regulations upon locomotives, boilers or tenders than those already established by the Interstate Commerce Commission under the Boiler Inspection Act. This question is not involved in the case at bar. The cases are cited as completely supporting the pre-emption of the Interstate Commerce Commission and its regulation. Certainly they are no authority for pre-empting to the Interstate Commerce Commission, a problem involving the destruction of a valid existing contract, neither prohibited

by Commission regulation, nor violating any Commission regulation.

Weber vs. Anheuser-Busch, 348 U. S. 978, is easily distinguishable. There a labor union went on strike and picketed the employer to compel the employer to insert in a collective labor contract a clause obligating the employer to employ for repair or replacement of machinery only contractors who had collective agreements with the Union. The employer filed an unfair practice charge which the Labor Relations Board found was no violation of Sec. 8 (b) (4) D of the Act. An injunction against the picketing was then sought in the Missouri State Court on the ground the union's *conduct* violated the state's restraint of trade statute.

Before this Court, the issue was whether the state court's jurisdiction to enjoin the union's conduct was pre-empted by the federal labor relations act. This Court held the union conduct came within the exclusive primary jurisdiction of the National Labor Relations Board.

The United States Supreme Court was dealing with certain union conduct. What union conduct? *Picketing* to compel certain ingredients inserted in a contract. Anheuser-Busch complained in the State Court that the strike constituted "a secondary boycott under the common law of the State of Missouri, and also was in violation of the Taft-Hartley Act." The original complaint was amended to say the Union's picketing constituted an illegal conspiracy in restraint of trade under Missouri common law and conspiracy statutes. The employer, itself, alleged the conduct it was seeking to stop came within the prohibitions of the Federal Act. Nevertheless, it disregarded the Board and obtained relief from a state court.

Facing these facts, it is very difficult for this counsel

to see how the United States Supreme Court could have reached any answer different from the decision reached and which we believe is supported by the earlier decisions of the Court.

However, we cannot come to the conclusion that *Anheuser-Busch* is conclusive on pre-emption, except on the facts as considered by the Court. We get condolence for state court jurisdiction from the words of Justice Frankfurter on page 480 when he says:

> "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code, whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces. As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action (citing Garner). But as the opinion in that case recalled, the Labor-Management Relations Act 'leaves much to the States, though Congress has refrained from telling us how much.' * * * Regarding the conduct here in controversy, Congress has sufficiently expressed its purpose to bring it within federal oversight and to exclude state prohibition."

In the case at bar, Oliver has not alleged unfair labor practices. The facts cannot reasonably bring the controversy within the sections prohibiting unfair labor practices. The conduct of the parties is not prohibited by the federal act. 'The Act furnishes no protection to Oliver. The State court may in such instance exercise jurisdiction, give the parties a full and complete hearing and grant such relief as the facts and circumstances justify. This the

State Courts of Ohio have done without invading or tampering with the Act of Congress selecting the tribunal which shall determine the issue in the first instance in the type of cases in which the Supreme Court of the United States has said the State Courts shall decline, jurisdiction.

General Drivers, etc. vs. American Tobacco Co., 246 S. W. (2) 250, reversed per curiam by this Court, 348 U. S. 978, April 5, 1955, presented the case of a tobacco company seeking an injunction to enjoin picketing against the company's subsidiary and to compel employees of a common carrier, members of the union conducting the strike, to cross the picket line and handle freight for the tobacco company. The Court of Appeals of Kentucky held that the picketing did not constitute a secondary boycott and that the employees of common carrier could not legally refuse to handle freight for the tobacco company, notwithstanding the strike against the subsidiary.

The case did not turn upon the provisions of a collective bargaining agreement and is no authority for the proposition set forth by petitioner nor ground for granting a writ on the facts here involved.

Nor does *Kerrigan Iron Works, Inc. vs. Cook Truck Lines*, 296 S. W. (2) 379, in which certiorari was granted by this Court May 27, 1957, 353 U. S. 968, support their theory. In this case the shipper sought an injunction against a common carrier to continue rendering service to the shipper who was being picketed by a union representing the shipper's employees, and to restrain another union, which represented carrier's employees from interfering with the rendering of such service. The Tennessee Court of Appeals held the shipper was entitled to the injunction.

In both instances relief was sought against picketing. A bona fide contract of the complaining party was not being interfered with or destroyed.

Nor does *N. L. R. B. vs. Nu-Car Carriers*, 189 F. (2) 756, support petitioner's theory. This was an action against the carrier by the N. L. R. B. to enforce an order of unfair labor practice against the carrier. There the owner-operator's transaction with the carrier involved an "Agreement of Sale" of the equipment by the carrier and a "Lease of Equipment Agreement." The test of control under these circumstances was applied by the Board and the Court to determine whether or not the owner-operator involved was an employee or independent contractor. The carrier had engaged in an unfair labor practice by causing 28 admitted employees of carrier, none of whom owned his equipment, to purchase and lease back the equipment to the carrier, and thus attempt to make the 28 employees, independent contractors, not amenable to or covered by the Act. A blind man might easily see through this subterfuge and we find no criticism of the decision of either the Board or the Court. Certainly, it is no precedent for a writ in the case at bar. In fact the Court said (p. 760):

> "We do not, of course, lay down any rule applicable to all 'owner-operator' situations. Our conclusion is directed to the facts of this case."

In our opinion, quite properly the 3rd U. S. Circuit Court of Appeals as well as the Courts of Ohio follow the excellent example of this Court in applying the law to the facts of the case before it.

When we examine the facts here, we may safely conclude the petition for a writ should properly be denied.

CONCLUSION.

Since a writ of certiorari is not a matter of right, but of sound, judicial discretion and the Courts of the State of Ohio have not decided a federal question not theretofore determined by this Court nor in a way not in accord with applicable decisions of this Court (Rule 19) it is respectfully submitted the petition for a writ should be dismissed.

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